

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Confirmation No. 4702
John T. Pugaczewski	Examiner: Melvin H. Pollack
Application No.: 09/469,206	Technology Center/Art Unit: 2145
Filed: 1999-12-21	<u>PETITION UNDER 37 C.F.R. § 1.181(a)</u>
Title: NETWORK MANAGEMENT SYSTEM AND GRAPHICAL USER INTERFACE	<u>TO WITHDRAW HOLDING OF</u>
Customer No.: 83809	<u>ABANDONMENT</u>

VIA EFS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The applicants respectfully petition the Director to withdraw the holding of abandonment in this case. The facts of this case, to the knowledge of the undersigned, are as follows:

1. On November 26, 2004, the Board of Patent Appeals and Interferences (the "Board") mailed a Decision on Appeal (attached hereto as Exhibit A), affirming the rejection of claims 1-10.
2. On January 21, 2005, the applicants timely filed a Request for Rehearing (attached hereto as Exhibit B) of the appeal by the Board.
3. On May 18, 2005, the Board mailed a Decision on Request for Rehearing (attached hereto as Exhibit C), in which the Board "grant[ed] the appellants' request to reverse the rejection of claims 1 and 4 under § 102(e) and the rejections of claims 2, 3, and 5-10 under § 103(a)."

4. It is believed that this Decision on Request for Rehearing returned the application to the examiner for immediate action. *See MPEP § 1214.04.*

5. Rather than taking any action on the application, however, the Office mailed a Notice of Abandonment (attached hereto as Exhibit D) on August 22, 2005. The Notice of Abandonment referred to the original Decision on Appeal mailed November 26, 2004, after which no claims stood allowed, but disregarded the Decision on Request for Rehearing mailed May 18, 2005, after which all claims stood allowed. It is not known whether the Notice of Abandonment was received by the applicants.

6. On May 19, 2007, the applicants filed a Status Inquiry (attached hereto as Exhibit E). No reply to the Status Inquiry was received from the Office.

It is believed that the Notice of Abandonment was mailed in error, and that the claims, in fact, are in condition for allowance. Accordingly, the applicants respectfully request withdrawal of the erroneous holding of abandonment and the mailing of a formal notice of allowance at the Office's earliest convenience. If it would be helpful to obtain expedite examination of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

Undersigned counsel believes, after reasonable investigation, that any delay in filing this Petition results from oversight, rather than any intent to delay prosecution.

Pursuant to MPEP § 711.03(c), no fees are believed due in connection with this Petition. Nonetheless, the undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to deposit account No. 19-5117.

Respectfully submitted,

Date: 2010-09-13

/Chad E. King/

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EXHIBIT A

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 17

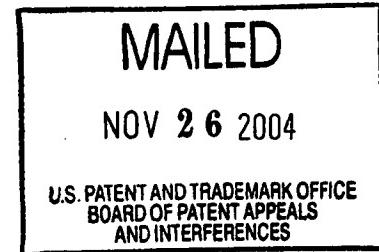
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JOHN T. PUGACZEWSKI, JEFFREY T. KAYS,
NICHOLAS P. CHANTILOUPE, and FRED M. HENDRICKS

Appeal No. 2004-0855
Application No. 09/469,206

ON BRIEF



Before HAIRSTON, FLEMING, and BARRY, *Administrative Patent Judges*.
BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

A patent examiner rejected claims 1-10. The appellants appeal therefrom under 35 U.S.C. § 134(a). We affirm.

BACKGROUND

The invention at issue on appeal configures a network connection. (Spec. at 1.) More specifically, the invention allows a user to select a speed of service via a graphical user interface. (*Id.* at 37-38.) For example, a customer working at 256 kbps may change to 512 kbps or 768 kbps. (*Id.* at 39.) According to the appellants, such

self-selection of speeds "mitigate[s] additional truck-rolls and technician dispatches via remote network provisioning of service upgrades to higher (or lower) classes of service." (*Id.* at 37.)

A further understanding of the invention can be achieved by reading the following claim.

7. A method for providing, to a user, a user interface to a network management system for configuring a network connection between a provider access point and a user access point over a network including a permanent virtual circuit between a switch and the user access point, the method further comprising:

establishing a graphical user interface to the user at the user access point that interfaces the user with the network management system;

directing the user, through the user interface, to select a connection bandwidth for the permanent virtual circuit between the switch and the user access point;

receiving at the network management system, through the user interface, a message indicative of a selected bandwidth from the user; and

remotely provisioning the switch with the network management system in response to receiving the message to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the user selected bandwidth thereby allowing the user, from the user access point, to interface with the network management system and select a bandwidth that is, in turn, provisioned as the connection bandwidth between the switch and the user access point.

Claims 1 and 4 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,307,836 ("Jones"). Claim 2 stands rejected under 35 U.S.C. § 103(a) as obvious over Jones and U.S. Patent No. 6,377,554 ("Farnsworth"). Claims 3, 6, 7, and 9 stand rejected under § 103(a) as obvious over Jones and U.S. Patent No. 6,292,834 ("Ravi"). Claim 5 stands rejected under § 103(a) as obvious over Jones and U.S. Patent No. 5,953,338 ("Ma"). Claim 8 stands rejected under § 103(a) as obvious over Jones, Ravi, and Farnsworth. Claim 10 stands rejected under § 103(a) as obvious over Jones, Ravi, and Ma.

OPINION

"[T]o assure separate review by the Board of individual claims within each group of claims subject to a common ground of rejection, an appellant's brief to the Board must contain a clear statement for each rejection: (a) asserting that the patentability of claims within the group of claims subject to this rejection do not stand or fall together, and (b) identifying which individual claim or claims within the group are separately patentable and the reasons why the examiner's rejection should not be sustained." *In re McDaniel*, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002) (citing 37 C.F.R. §1.192(c)(7) (2001)). "If the brief fails to meet either requirement, the Board is free to select a single claim from each group of claims subject to a common ground of

rejection based solely on the selected representative claim." *Id.*, 293 F.3d at 1383, 63 USPQ2d at 1465.

Here, the appellants stipulate, "claims 1, 4 stand or fall together." (Appeal Br. at 8.) We select claim 1 from the group as representative of the claims therein. With this representation in mind, rather than reiterate the positions of the examiner or the appellants *in toto*, we focus on the sole point of contention therebetween. The examiner finds, "Jones['] handshaking must include the user sending a message to change the bandwidth (also shown in Fig. 4, and col: 6, lines 50-56, and col. 7, lines 25-31)." (Examiner's Answer at 10.) He further finds "[f]rom there, it is clear that the switch changes the bandwidth. . . . [T]he bandwidth change is in response to the message, which is shown in the teachings (col. 9, lines 45-50, and Fig. 4). The details of this are further illustrated in col. 10, lines 55-67 and col. 11, lines 20-55." (*Id.* at 10.) The appellants argue, "Jones connects the user signal through the local switch fabric to the transport network bandwidth using a handshaking technique as opposed to the claimed technique of throttling the network connection at the switch in response to receiving a message. . . ." (Appeal Br. at 9.)

In addressing the point of contention, the Board conducts a two-step analysis. First, we construe the representative claim at issue to determine its scope. Second, we determine whether the construed claim is anticipated.

1. CLAIM CONSTRUCTION

"Analysis begins with a key legal question — *what is the invention claimed?*" *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987). In answering the question, "the Board must give claims their broadest reasonable construction. . . ." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1668 (Fed. Cir. 2000). Furthermore, "[a] transitional term such as 'comprising' or . . . 'which comprises,' does not exclude additional unrecited elements, or steps. . . ." *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 1271, 229 USPQ 805, 812 (Fed. Cir. 1986).

Here, claim 1 recites in pertinent part the following limitations: "remotely provisioning the switch with the network management system in response to receiving the message to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the user selected bandwidth. . . ." Giving the representative claim its broadest, reasonable construction,

the limitations require limiting the bandwidth of a network connection in response to a user's request. Because claim 1 uses the transitional term "comprising," however, it does not exclude additional elements or steps.

2. ANTICIPATION DETERMINATION

"Having construed the claim limitations at issue, we now compare the claims to the prior art to determine if the prior art anticipates those claims." *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349, 64 USPQ2d 1202, 1206 (Fed. Cir. 2002). "[A]nticipation is a question of fact." *Hyatt*, 211 F.3d at 1371, 54 USPQ2d at 1667 (citing *Bischoff v. Wethered*, 76 U.S. (9 Wall.) 812, 814-15 (1869); *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997)). "A claim is anticipated . . . if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (citing *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715, 223 USPQ 1264, 1270 (Fed. Cir. 1984); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983); *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983)).

Here, Jones discloses "a technique by which a user conveys to network intelligence a request to operate a digital subscriber loop (DSL) in a particular manner." Col. 4, ll. 13-15. After "establish[ing] a communications session," *id.* at l. 16, "the technique allows a user to communicate to a network intelligence device a first line mode of accessing [a] network." *Id.* at ll. 17-19. Thereafter, "the technique permits the user to request that the network intelligence device change the communications session to a second line mode of accessing the network." *Id.* at ll. 19-21. The possible "[a]ccess line modes include available bit rate (ABR), variable bit rate (VBR) and constant bit rate (CBR) applications." *Id.* at ll. 23-25.

A user operating in the VBR mode, for example, may change to the CBR mode. Figure 4 of the reference "depicts a flow diagram 402," col. 10, l. 56, of how this is done. First, a "user 104 communicates a desired access line mode to network intelligence 114 through user control interface 118 and 'D' channel signaling." Col. 10, ll. 58-60. Because the user has requested the CBR mode, "operation branches to step 410," col. 11, ll. 24-26, and "the network intelligence 114 verifies whether the network has sufficient unused capacity to fulfill the CBR request of user 104." *Id.* at ll. 36-38. "The verification . . . entails processes of validation, protocol/bit-rate negotiation, routing, and handshaking. If network intelligence 114 determines

that the network has sufficient capacity to fulfill the CBR request, then operation continues with step 416." *Id.* at II. 38-43. "In step 416, local switch fabric 110 connects the signal of user 104 through transport bandwidth 112 for CBR mode access," *id.* at II. 46-48, and "CBR communication proceeds." *Id.* at I. 49.

Once in the CBR mode, the bandwidth of the user's network connection is limited to a constant bit rate. Whereas the VBR mode may have allowed the bandwidth to vary between a lower bit rate and a maximum bit rate, for example, the CBR mode may limit the bandwidth to a bit rate well below the maximum bit rate.

The appellants' argument attempts to distinguish Jones by emphasizing that the reference verifies whether the network has sufficient unused capacity to fulfill the request for a CBR before doing so. Because claim 1 is open-ended, however, it does not preclude an additional element of verification. Therefore, we affirm the anticipation rejection of claim 1 and of claim 4, which falls therewith.

Rather than arguing the rejections of claims 2, 3, and 5-10 separately, the appellants rely on their aforementioned argument. (Appeal Br. at 10-11.) Unpersuaded by these arguments, we affirm the obviousness rejections of claims 2, 3, and 5-10.

CONCLUSION

In summary, the rejection of claims 1 and 4 under § 102(e) is affirmed. The rejections of claims 2, 3, and 5-10 under § 103(a) are also affirmed.

"Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences. . . ." 37 C.F.R. § 1.192(a). Accordingly, our affirmance is based only on the arguments made in the briefs. Any arguments or authorities omitted therefrom are neither before us nor at issue but are considered waived. Cf. *In re Watts*, 354 F.3d 1362, 1367, 69 USPQ2d 1453, 1457 (Fed. Cir. 2004) ("[I]t is important that the applicant challenging a decision not be permitted to raise arguments on appeal that were not presented to the Board.")

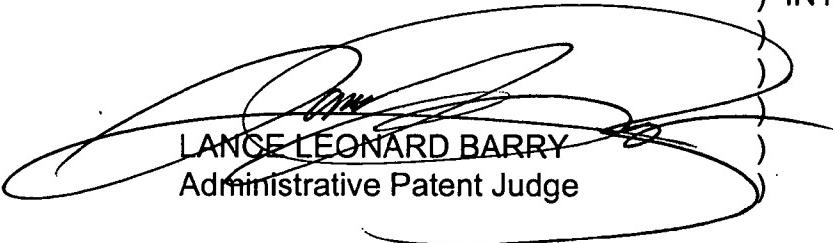
No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED


KENNETH W. HAIRSTON
Administrative Patent Judge


MICHAEL R. FLEMING
Administrative Patent Judge

)
) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES


LANCE LEONARD BARRY
Administrative Patent Judge

Appeal No. 2004-0855
Application No. 09/469,206

Page 11

QWEST COMMUNICATIONS INTERNATIONAL INC.
LAW DEPT. INTELLECTUAL PROPERTY GROUP
1801 CALIFORNIA STREET, SUITE 3800
DENVER, CO 80202

EXHIBIT B



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of:

JOHN T. PUGACZEWSKI ET AL.

Group Art Unit: 2141

Appeal No.: 2004-0855

Examiner: Melvin H. Pollack

Serial No.: 09/469,206

Filed: December 21, 1999

For: NETWORK MANAGEMENT SYSTEM AND GRAPHICAL USER INTERFACE

Attorney Docket No.: 1626 (USW 0529 PUS)

**REQUEST FOR REHEARING BY THE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby request rehearing by the Board of Patent Appeals and Interferences of the appeal in this application. The following points are believed to have been misapprehended or overlooked in rendering the decision.

In the claim construction, the Board acknowledges the following limitations: "remotely provisioning the switch with the network management system in response to receiving the message to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the user selected

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Commissioner for Patents, U.S. Patent & Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on:

January 18, 2005
Date of Deposit

Jeremy J. Curcuri
Name of Person Signing


Signature

bandwidth." However, in the anticipation determination, it appears that the limitation of "to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the user selected bandwidth" has not been specifically addressed. The decision focuses on the mode switching ability of Jones. However, at most, this feature of Jones only provides provisioning, and does not suggest the throttle function.

Claim 1 recites a specific action/function combination including the limitation of "to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the user selected bandwidth." Jones fails to suggest this limitation.

Jones does describe the fanning out of upstream and downstream channels, and multiplexing available bit rate (ABR) and variable bit rate (VBR) data traffic from different sources. Jones also describes enabling the number of upstream and downstream channels to differ and enabling the number of upstream and downstream channels to vary from call to call and within a call. In making the anticipation determination, the Board has only focused on the claimed aspect of provisioning the switch in response to receiving the message. The Board has failed to address the further limitation of "to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the user selected bandwidth."

Applicants contend that there is no structure within Jones for performing throttling of the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the user selected bandwidth. In contrast, Jones only describes connecting the user signal to the local switch fabric to the transport network bandwidth using a traditional hand shaking technique as opposed to the claimed technique of throttling the network connection at the switch as recited by claim 1.

Because the anticipation determination seems to overlook a specific limitation of claim 1 that is acknowledged in the claim construction, Applicants respectfully request rehearing of this appeal, and believe that the final rejection of claims 1-10 should be reversed.

Respectfully submitted,

JOHN T. PUGACZEWSKI ET AL.

By: Jeremy J. Curcuri
Jeremy J. Curcuri
Registration No. 42,454
Attorney for Applicant

Date: January 18, 2005

BROOKS KUSHMAN P.C.
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EXHIBIT C

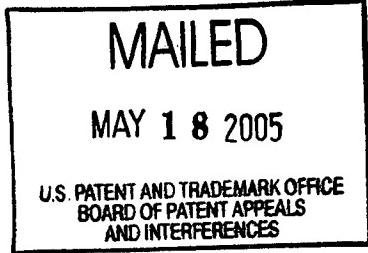
The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

*Ex parte JOHN T. PUGACZEWSKI, JEFFREY T. KAYS,
NICHOLAS P. CHANTILOUPE, and FRED M. HENDRICKS*



Appeal No. 2004-0855
Application No. 09/469,206

ON BRIEF

Before HAIRSTON, FLEMING, and BARRY, *Administrative Patent Judges*.
BARRY, Administrative Patent Judge.

DECISION ON REQUEST FOR REHEARING

A patent examiner rejected claims 1-10. The appellants appealed; we affirmed.

Ex parte Pugaczewski, No. 2004-0855, slip op. at 1 (Bd.Pat.App. & Int. Nov. 26, 2004).

Pursuant to 37 C.F.R. § 41.52(a)(1), the appellants now ask us to reconsider our affirmation. (Req. Reh'g at 1.) We grant.

OPINION

Rather than reiterate the position of the appellants *in toto*, we focus on their sole point of contention. To wit, they "contend that there is no structure within Jones for performing throttling of the network connection at the switch such that the connection

bandwidth between the switch and the user access point is limited by the user selected bandwidth." (Req. Reh'g at 2.)

In addressing the point of contention, the Board conducts a two-step analysis. First, we construe the independent claims to determine their scope. Second, we determine whether the construed claims are anticipated or would have been obvious.

1. CLAIM CONSTRUCTION

"Analysis begins with a key legal question — *what is the invention claimed?*" *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987). In answering the question, "[t]he Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art." *In re Lowry*, 32 F.3d 1579, 1582, 32 USPQ2d 1031, 1034 (Fed. Cir. 1994) (citing *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983)).

Here, claim 1 recites in pertinent part the following limitations: "to throttle the network connection at the switch such that the connection bandwidth between the switch and the user access point is limited by the user selected bandwidth. . . ." Claim 7 recites similar limitations. Considering these limitations, the independent claims require throttling a network connection at a switch so that the connection

bandwidth between the switch and a user's access point is limited to a bandwidth selected by the user.

2. ANTICIPATION AND OBVIOUSNESS DETERMINATIONS

"Having construed the claim limitations at issue, we now compare the claims to the prior art to determine if the prior art anticipates those claims." *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349, 64 USPQ2d 1202, 1206 (Fed. Cir. 2002). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (citing *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715, 223 USPQ 1264, 1270 (Fed. Cir. 1984); *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983); *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983)). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

Here, Jones discloses "a technique by which a user conveys to network intelligence a request to operate a digital subscriber loop (DSL) in a particular manner." Col. 4, ll. 13-15. After "establish[ing] a communications session," *id.* at l. 16, "the

technique allows a user to communicate to a network intelligence device a first line mode of accessing [a] network." *Id.* at II. 17-19. Thereafter, "the technique permits the user to request that the network intelligence device change the communications session to a second line mode of accessing the network." *Id.* at II. 19-21. The possible "[a]ccess line modes include available bit rate (ABR), variable bit rate (VBR) and constant bit rate (CBR) applications." *Id.* at II. 23-25.

A user operating in the VBR mode, for example, may change to the CBR mode. Figure 4 of the reference "depicts a flow diagram 402," col. 10, l. 56, of how this is done. First, a "user 104 communicates a desired access line mode to network intelligence 114 through user control interface 118 and 'D' channel signaling." Col. 10, II. 58-60. Because the user has requested the CBR mode, "operation branches to step 410," col. 11, II. 24-26, and "the network intelligence 114 verifies whether the network has sufficient unused capacity to fulfill the CBR request of user 104." *Id.* at II. 36-38. "The verification . . . entails processes of validation, protocol/bit-rate negotiation, routing, and handshaking. If network intelligence 114 determines that the network has sufficient capacity to fulfill the CBR request, then operation continues with step 416." *Id.* at II. 38-43. "In step 416, local switch fabric 110 connects the signal of user 104 through transport bandwidth 112 for CBR mode access," *id.* at II. 46-48, and "CBR communication proceeds." *Id.* at l. 49.

Although the CBR mode limits the user's bit rate to a constant rate, we are unpersuaded that it limits the connection bandwidth between the local switch fabric 110 and the user's control interface 118 to a bandwidth selected by the user. The absence of limiting the connection bandwidth between a switch and a user's access point to a bandwidth selected by the user negates anticipation. Therefore, we reverse the anticipation rejection of claim 1 and of claim 4, which depends therefrom.

"In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness." *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993) (citing *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992)). "A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)).

Here, the examiner does not allege, let alone show, that the addition of Ravi, Farnsworth, or Ma cures the aforementioned deficiency of Jones. Absent a teaching or suggestion of limiting the connection bandwidth between a switch and a user's access point to a bandwidth selected by the user, we are unpersuaded of a *prima facie* case of

obviousness. Therefore, we reverse the obviousness rejections of claims 2, 3, and 5-10.

CONCLUSION

In summary, we grant the appellants' request to reverse the rejection of claims 1 and 4 under § 102(e) and the rejections of claims 2, 3, and 5-10 under § 103(a).

GRANTED



KENNETH W. HAIRSTON
Administrative Patent Judge



MICHAEL R. FLEMING
Administrative Patent Judge

)
) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES



LANCE LEONARD BARRY
Administrative Patent Judge

Appeal No. 2004-0855
Application No. 09/469,206

Page 8

QWEST COMMUNICATIONS INTERNATIONAL INC.
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DENVER, CO 80202

EXHIBIT D



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/469,206	12/21/1999	JOHN T. PUGACZEWSKI	1626(USW0529	4702
22193	7590	08/22/2005	EXAMINER	
QWEST COMMUNICATIONS INTERNATIONAL INC LAW DEPT INTELLECTUAL PROPERTY GROUP 1801 CALIFORNIA STREET, SUITE 3800 DENVER, CO 80202			POLLACK, MELVIN H	
			ART UNIT	PAPER NUMBER
			2145	
DATE MAILED: 08/22/2005				

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Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Abandonment	Application No.	Applicant(s)
	09/469,206	PUGACZEWSKI ET AL.
	Examiner Melvin H. Pollack	Art Unit 2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on _____.
 (a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 (b) A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
 (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 (c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 (d) No reply has been received.
2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 (a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 (b) The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
 The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 (a) Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 (b) No corrected drawings have been received.
4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. The decision by the Board of Patent Appeals and Interference rendered on 26 November 2004 and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. The reason(s) below:

MHP

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

EXHIBIT E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

JOHN T. PUGACZEWSKI ET AL.

Appeal No.: 2004-0855

Group Art Unit: 2141

Examiner: Melvin H. Pollack

Serial No.: 09/469,206

Filed: December 21, 1999

For: NETWORK MANAGEMENT SYSTEM AND GRAPHICAL USER INTERFACE

Attorney Docket No.: 1626 (USW 0529 PUS)

STATUS INQUIRY

Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Please inform us of the status of the above-identified patent application and as to when we may expect an Office Action from the U.S. Patent and Trademark Office.

Respectfully submitted,

BRUCE A. PHILLIPS ET AL.

By: /Jeremy J. Curcuri/
Jeremy J. Curcuri
Reg. No. 42,454
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Date: May 19, 2007

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Electronic Acknowledgement Receipt

EFS ID:	1792232
Application Number:	09469206
International Application Number:	
Confirmation Number:	4702
Title of Invention:	NETWORK MANAGEMENT SYSTEM AND GRAPHICAL USER INTERFACE
First Named Inventor/Applicant Name:	JOHN T. PUGACZEWSKI
Customer Number:	22193
Filer:	Jeremy J. Curcuri/Sherry Kelly
Filer Authorized By:	Jeremy J. Curcuri
Attorney Docket Number:	1626(USW0529
Receipt Date:	19-MAY-2007
Filing Date:	21-DEC-1999
Time Stamp:	09:09:33
Application Type:	Utility

Payment information:

Submitted with Payment	no
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File Listing:

Document Number	Document Description	File Name	File Size(Bytes)	Multi Part /.zip	Pages (if appl.)
1	Miscellaneous Incoming Letter	status_inquiry.pdf	33695	no	1

Warnings: